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ESTATES-VALUATION OF A LIFE ESTATE

ESTATES—VALUATION OF A LIFE ESTATE—A tract of land was conveyed to H. C. Miracle for life and the remainder in fee to his four children by name. The life tenant (H. C. Miracle) together with three remaindermen deeded the tract of land to a purchaser for $15,000 on the understanding that the other remainderman, an infant, would execute a deed upon reaching her majority. The infant remainderman, however, had refused to convey and had brought partition proceedings against the purchaser in which one-fourth of the land was set apart for her. The life tenant had borrowed from the plaintiff, giving his note. In a suit brought by the plaintiff to collect the balance of the note, the question arose as to what part of the entire consideration received for the land belonged to the estate of the life tenant, since the life tenant had died four months after the sale. The trial court held that the life tenant was entitled to the cash value of his life estate based on the mortality tables. On appeal, it was *held* that the life tenant was entitled only to the income of the reinvested proceeds of the sale until the termination of his interest by death. *Miracle v. Miracle*, 260 Ky. 624, 86 S. W. (2d) 536 (1935).

A court of equity has jurisdiction to apportion the proceeds from the voluntary sale or conveyance of a life estate and remainder in the absence of any agreement by the parties [1] or statutory provision.[2] The courts have adopted several theories for the valuation of a life estate. The old theory used in England and in a few courts in the United States was to consider the estate for life as equal in value to one-third of the whole estate.[3] It was an arbitrary proportion used in cases of encumbrances but has since been exploded as unreasonable. It has been superseded by the two general methods of valuation adopted by the trial court and the appellate court in the principal case. The theory of the trial court, based on the pioneer case of *Foster v. Hilliard*,[4] is that the present value of the life estate is computed from the life expectancy of the life tenant as determined from the mortality tables.[5] This rule is followed and most clearly justified in removing a mortgage encumbrance on land;[6] in apportioning the cost of permanent improvements;[7] or in apportioning any charges, such as taxes, damages in condemnation proceedings, and assessment for betterments between life tenant and remainderman.[8] The justification arises from the fact that in these cases the value could not be ascertained in any other way which would not be equally uncertain. The

[1] Ferris v. Poucher, 152 Mich. 251, 115 N. W. 1054 (1908).

[2] Marshall v. Marshall, 252 Ill. 568, 96 N. E. 907 (1911).

[3] Dennison's Appeal, 1 Barr. (1 Pa.) 201 (1845); Clyat v. Batteson, 1 Vern. 404, 23 Eng. Rep. 546 (1686); Datesman's Appeal, 127 Pa. 348, 17 A. 1086 (1889); Shippen and Robbin's Appeal, 30 Smith (80 Pa.) 391 (1876).

[4] (C. C. A. 1st, 1840) Fed. Cas. No. 4972, 1 Story 77.

[5] Thompson v. Thompson, 102 Ala. 163, 18 So. 247 (1894); Callicott v. Parks, 58 Miss. 528 (1880); Keniston v. Gorrell, 74 N. H. 53, 64 A. 1101 (1906).

[6] Draper v. Clayton, 87 Neb. 443, 127 N. W. 369 (1911); Allan v. Backhouse, 2 Ves. & B. 65, 35 Eng. Rep. 243 (1813); Dyett v. Central Trust Co., 140 N. Y. 54, 35 N. E. 341 (1893).

[7] Kline v. Dowling, 176 Ind. 521, 96 N. E. 579 (1911); In re Whitney, 75 Misc. 610, 136 N. Y. S. 633 (1912).

[8] Ithaca Trust Co. v. United States, 279 U. S. 151, 49 S. Ct. 291 (1928). See 9 BOST. UNIV. L. REV. 288 (1929); Mitton v. Burrill, 229 Mass. 140, 118 N. E. 274 (1918).

rule is entirely based on probabilities, but any other scheme would also tie up funds so as to require the mortality tables for computation. But the courts in using the mortality tables should consider the health and habits of the life tenant, for otherwise the use of the tables would lead to unreasonable results.[9] The theory of the appellate court is that the life tenant is deemed to be entitled to the income of the whole fund for his life and on his death the whole fund is to go to the remaindermen.[10] Many states have express statutes adopting this view by providing for the reinvestment of the proceeds where land, subject to a life estate and remainder, is sold, when it is unproductive, or the income is insufficient to pay the taxes and upkeep.[11] Even in the absence of a statute, where a court of equity intervenes on equitable principles to order a sale of land, it will decline to interfere to change real estate by sale into personal property without imposing conditions by which the proceeds shall retain throughout the character of the original fund.[12] Thus, where the estate of the life tenant is in an undivided interest and not in the whole of the land, and a sale is ordered for the partition, he is only entitled to the income from his undivided interest in the proceeds as long as the life estate may continue to exist.[13] The clearest example of this is where a mortgage is foreclosed or a partition sale is made of land subject to dower, whereby the widow is usually given the income from one-third of the proceeds for the period of her life.[14] This rule is also followed where the life tenant and remainderman join in executing an oil lease, which is, in effect, a sale of a portion of the land. Yet the courts hold that the life tenant will be entitled to the interest on the royalty during the continuance of the life estate and then the residue or corpus of the royalty will be paid to the remainderman.[15] The principal case in rejecting the doctrine of *Foster v. Hillard*,[16] although citing in support of its opinion mostly lower cases, elaborately criticizes that case on two grounds. The decision first attacks the analysis of the essential interests of life tenant and remainderman made by the court in the *Foster* case. Judge Story had there compared the interest of the life tenant and the remainderman to tenants in common or joint tenants and reached the conclusion "that under a sale the tenant for life sells his life estate; that he sells it for what it is then worth and his share does not depend upon the future event of his death, but upon the present value, computed upon his expectancy." This reasoning is criticized on the ground that the life

[9] Atkins v. Kron, 43 N. C. 1 (1851); Steiner Bros. v. Berney, 130 Ala. 289, 30 So. 570 (1900).

[10] Beach v. Beers, 80 Conn. 459, 68 A. 990 (1908); Coquillard v. Coquillard, 62 Ind. App. 489, 113 N. E. 481 (1916); Ellguth v. Ellguth, 250 Ill. 214, 95 N. E. 169 (1911); Datesman's Appeal, 127 Pa. 348, 17 A. 1086 (1889); Beavers v. Smith, 11 Ala. 20 (1847).

[11] Stepp v. Stepp, 200 N. C. 237, 156 S. E. 804 (1931).

[12] See 28 MICH. L. REV. 188 (1929).

[13] Lone Acre Oil Co. v. Swayne, (Tex. Civ. App. 1903) 78 S. W. 380.

[14] Beavers v. Smith, 11 Ala. 20 (1847); Alexander, Exr. v. Bradley, 3 Bush (66 Ky.) 667 (1868); Hinchman v. Stiles, 9 N. J. Eq. 361 (1853); Harrison's Exrs. v. Payne, 32 Gratt. (73 Va.) 387 (1879).

[15] Eakin v. Hawkins, 52 W. Va. 124, 43 S. E. 211 (1902); Wilson v. Youst, 43 W. Va. 826, 28 S. E. 781 (1897).

[16] See note 4, supra.

tenant merely has the right to use his property during his life; when his life terminates his estate ceases, and the remainderman comes into enjoyment. Therefore, if he is merely entitled to the use of the proceeds of the land, he should only claim the use of the proceeds of the sale. The application of the mortality tables would lead to an unfair result, as is illustrated by the principal case where the life tenant died four months after the sale. Second, it is pointed out that a court of equity should not have the power to compute and pay a gross sum to the life tenant except in special circumstances.[17] From this approach it seems that the view of the principal case is sounder and more equitable than the doctrine of *Foster v. Hilliard*.[18]

H. J. B.

[17] American Nat. Bank v. Taylor, 112 Va. 1, 70 S. E. 534 (1911).
[18] See note 4, supra.